ORIGINAL

0000179722

AZ CORP COMMISSION
DOCKET CONTROL

2017 MAY 17 P 2:26

Jay I. Moyes, No. 007207
Jason Y. Moyes, No. 025864
MOYES SELLERS & HENDRICKS Ltd.
1850 N. Central Avenue, Suite 1100
Phoenix, Arizona 85004
602-604-2141
Attorneys for Electrical District Number Eight and McMullen Valley Water Conservation & Drainage District

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE, Chairman
BOB STUMP
BOB BURNS
ANDY TOBIN
TOM FORESE

Arizona Corporation Commission
DOCKETED

MAY 17 2017

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN IN THE MATTER OF FUEL AND PURCHASED POWER PROCUREMENT AUDITS FOR ARIZONA PUBLIC SERVICE	Docket No. E-01345A-16-0036 Docket No. E-01345A-16-0123 **NOTICE OF FILING INITIAL POST-HEARING BRIEF OF ELECTRICAL DISTRICT NUMBER EIGHT AND MCMULLEN VALLEY WATER CONSERVATION & DRAINAGE DISTRICT**

Electrical District Number Eight and McMullen Valley Water Conservation & Drainage District (hereinafter collectively referred to as "ED8/McMullen"), through undersigned counsel, hereby submits its Initial Post-Hearing Brief, a copy of which is attached.

DATED this 17th day of May, 2017.

MOYES SELLERS & HENDRICKS

Jason Y. Moyes
Jay I. Moyes

Attorneys for Electrical District Number Eight and McMullen Valley Water Conservation & Drainage District
E-mail: jimoyes@law-msh.com
jasonmoyes@law-msh.com
jim@harcuvar.com

ORIGINAL and 15 COPIES of the foregoing filed this 17th day of May 2017, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

COPIES of the foregoing mailed this 17th day of May 2017 to:

Utilities Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Legal Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Arizona Corporation Commission
Hearing Division
1200 W. Washington
Phoenix, AZ 85007

Patricia Ferre
P O Box 433
Payson, AZ 85547

COPIES of the foregoing electronically mailed this 17th day of May 2017, to:

All Parties of Record.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE, Chairman
BOB STUMP
BOB BURNS
ANDY TOBIN
TOM FORESE

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN	Docket No. E-01345A-16-0036 Docket No. E-01345A-16-0123
IN THE MATTER OF FUEL AND PURCHASED POWER PROCUREMENT AUDITS FOR ARIZONA PUBLIC SERVICE	

INITIAL POST-HEARING BRIEF OF ELECTRICAL DISTRICT NUMBER EIGHT AND MCMULLEN VALLEY WATER CONSERVATION & DRAINAGE DISTRICT

MAY 17, 2017

TABLE OF CONTENTS

I. INTRODUCTION

Electrical District Number Eight and McMullen Valley Water Conservation and Drainage District (ED8/McMullen) intervened in this rate case in hopes of raising questions about the recurring trend of settled rate cases that have become almost automatic before the Arizona Corporation Commission, at least when it comes to APS. ED8/McMullen also sought information regarding APS's accounting practices and methodologies for recovering construction overhead and other costs related to capital expenditures, particularly those that affect ED8/McMullen and similarly situated agricultural districts. To its credit, APS has been very helpful and forthcoming during this process in responding to ED8/McMullen's data requests and otherwise providing long-awaited answers regarding APS's treatment of wholesale district customers, all of which will hopefully foster a more productive relationship between the parties going forward. Nevertheless, ED8/McMullen continue to have concerns as to how the current settlement agreement –like its predecessors – was reached. ED8/McMullen reiterates and incorporates herein the statements made in its pre-filed testimony, settlement testimony, and the oral testimony of James D. Downing at hearing regarding the need for a full and thorough prudency examination of APS's request for a rate increase.

II. THIS CASE SHOULD NOT FOLLOW THE TOO-WELL ESTABLISHED PATTERN OF PRESUMPTIOUS COMPROMISE AND SETTLEMENT AMONG APS, RUCO AND STAFF.

The current rate case filed by APS, and the subsequent settlement agreement which was deliberated for seven days at hearing before the ALJ, must ultimately be approved, modified, or rejected by a panel of elected Commissioners. None of the currently serving Commissioners has ever had the opportunity to hear a fully litigated APS rate case. In fact, APS admitted at hearing that is has been at least a decade since one of its rate cases was decided by anything *but* a settlement agreement. Following up on a question asked by ED8/McMullen to Barbara Lockwood, APS witness Leland Snook clarified by stating:

> Yes, so the last rate case where APS didn't have a settlement was a decision in 2007. It was a 2005 test year case, and I think the Decision Number was 69663 that was a litigated case. . . .[1]

Furthermore, APS admitted that it has been at least *twelve* years since the Company was told by the Commission that it wasn't allowed to rate-base a capital expenditure:

> Q. The second question that I had asked, you began to answer and that question was, when the last time a specific capital expenditure by APS was disallowed or not allowed to be put into rate base, and you started to answer, I believe, talking about some 2005 Pinnacle West assets. I was just wondering if you could elaborate a little more on what that was?
>
> A. Yes. APS had an affiliated company, Pinnacle West Energy Corporation, that owned merchant generating units, and some of those units were sold off. Some of the units were put back into APS as rate-based assets. They're still in existence today. My understanding is that was the Red Hawk combined cycle units and the West Phoenix combined cycle units. And then I believe one combustion turbine at the Saguaro Power Plant location. And there was a specific disallowance on the book value that APS was authorized to bring those assets over into its rate base.[2]

APS's own published data reflects alarming trends in growth of capital expenditures, plant, revenues, and stockholder equity on the backs of a stagnant or declining rate-paying customer and electricity sales base. Allowing over a decade of additional rate-based capital expenditures and rate increases, without thorough scrutiny by the elected Commissioners, contravenes the constitutional and statutory authority and purpose of the Arizona Corporation Commission. Rate payers who have no choice over which electric utility serves them deserve more protection and assurances that they are not being taken advantage of by a monopoly whose primary interest is the financial well-being of its own shareholders. Prepackaged settlement agreements offer no such assurances.

---

[1] Hearing Transcript, p. 801, lines 6-9.
[2] *Id.* at p. 824, line 16 – p. 825, line 9.

The instant case has thus far followed the same unfortunate pattern of the last decade. Before the parties could even participate in a full evidentiary procedure to challenge the prudency of what APS asked for in its Application, Staff and RUCO (seemingly at the behest of APS) shuffled all of the intervenors into a confidential settlement process which was controlled from start to finish by APS. Without any discussion on what *should* be the first and most fundamental question of any rate case — specifically, the question of whether *any* increase is warranted at all — APS opened settlement "negotiations" by presenting a purportedly generous compromise offer. Ironically, Staff and RUCO (the two biggest non-APS champions of the settlement) had, just days prior, filed extensive expert testimony concluding that a rate *decrease* was justified. And yet, the first thing Staff and RUCO did during the settlement process was immediately negotiate against themselves by giving credence to APS's original filed "ask", essentially establishing the *ask* as the baseline by which all parties should judge the merits of any Staff, RUCO or APS compromise proposals and any ultimate settled outcome.

The tagline used by the settling parties again and again during these proceedings seems to be, "Look how much *less* APS is getting than what they asked for! Isn't that better for everyone?" RUCO Director David Tenney defended the settlement by stating:

> [W]e feel like there are several significant benefits to the residential ratepayer presented in the settlement. First of all would be that the revenue requirement of 87 million is greater than a 40 percent reduction from the company's original ask. We think that is a benefit to the consumer. The ROE of 10 percent is significantly lower than the 10.5 that was in the original application. We like the fact that the residential customer's average monthly bill will increase 4.5 percent as opposed to 7.96 percent that was originally proposed.[3]

Similarly, Staff's expert witness, Ralph Smith, testified at the hearing regarding only what the settlement agreement provides as compared to what APS asked for in its

[3] *Id.* at p. 1087, lines 1-11.

Application.[4] Not surprisingly, no mention was made of Mr. Smith's own pre-filed testimony that "Staff's recommendation equates to a net base decrease of approximately $74,000"[5], (other than a defensive reference to how a single alteration in the proposed settlement terms could change Mr. Smith's recommendation to an increase). In fact, none of the parties supporting the settlement addressed the validity of what APS asked for in the first place during the hearing. Instead, the settling parties would have us believe that because APS asked for the moon, we should all be grateful that they only got the stars.

III. IT IS PRESUMPTIOUS FOR THE MAJOR SETTLING PARTIES TO PURPORT TO PROPHECY THE OUTCOME OF A FULL EVIDENTIARY HEARING.

Throughout the settlement proceedings, another disturbing theme emerged amongst the settling parties. Counsel and witnesses for the major settling parties went to great lengths to prophecy what supposedly would be the outcome were this case to be fully litigated. On cross-examination by APS, RUCO's witness Mr. Tenney was asked the following:

> Q. And parties settle for all sorts of different reasons, is that right?
>
> A. Correct.
>
> Q. And when they don't settle, they are forced into litigation where the outcome is typically a binary win/loss outcome, is that correct?
>
> A. Correct, which is another reason why RUCO chose to support the settlement in this case, because fully litigated cases may have very likely resulted in worse conditions for consumers in certain areas.[6]

On cross examination from Staff, Mr. Tenney was asked:

---

[4] *Id.* at p. 993 line 16 – p. 997, line 18.
[5] Direct Testimony of Ralph C. Smith, p. 7.
[6] Hearing Transcript, p. 1092, line 20 – p. 1093, line 4.

Q. Were there provisions in the settlement agreement that caused you to sign onto the agreement because you felt they were in the residential consumer's best interest that probably would not have been possible in a litigated case?

A. Oh, absolutely.[7]

And again, when questioned by Warren Woodward, a non-settling party, Mr. Tenney responded with the following:

Q. At page 8, lines 21 to 23 of your testimony in support of the settlement agreement, you gave one of the reasons important to RUCO for supporting the settlement, quote:

Approximately 250,000 customers qualify for the residential extra small rate that has a BSC of $10. Many of the most financially vulnerable will be eligible for this rate and will receive only a minimal increase.

Mr. Tenney, are the most financially vulnerable supposed to be grateful for that minimal increase?

A. Mr. Woodward, I am not sure that anyone is necessarily grateful for any kind of an increase. But the reality is that is what is in the settlement, and when you view it as a whole, it is something we feel like about as good as we could get in the situation for all the people that we represent.[8]

How does RUCO, or any other settling party know what would happen if this case were fully litigated? A casual observer might conclude that the settling parties already had an inside glimpse into what a fully litigated decision by the Commissioners would look like. Presumably, those parties didn't have any ex-parte communications with the Commissioners to determine how they might rule in this case. So how can APS, RUCO and Staff continue to assert with such conviction that this settlement provides better results for rate payers than would be possible with a litigated outcome? Such a position implies that our elected Commissioners, themselves, are incapable of reviewing the full spectrum of evidence and then recommending reasonable rates that serve both the

[7] *Id.* p. 1096, lines 14-19.
[8] *Id.* at p. 1089, line 21 – p. 1090, line 11.

interests of customers and the Company. It is wholly presumptious to assert that a fully litigated case and subsequent decision by the Commissioners would be detrimental to the ratepayers when compared to the settlement agreement.

IV. CONCLUSION

None of the settling parties presented evidence during the settlement proceedings defending the need for, or prudence of, what APS stands to receive if the settlement agreement is approved. Nor did anyone explain what would happen to APS if the Company were denied a rate increase right now. The stark absence of any evidence supporting APS's "ask", and the attempt to validate the settlement by showing only that it provides less than the ask, and presuming it is better for ratepayers than some prophetic notion of what the Commissioners would grant to APS if there were to be a full evidentiary examination of the data, belies the purpose of having a hearing at all. ED8 and McMullen submit that this is *not* the proper approach to take when a regulated monopoly—one already making record profits—comes to the Commission with yet another rate increase request.

The time has come for the Commissioners, themselves, to make a decision based on a fully vetted record, one where all of APS's capital expenditures are thoroughly examined for prudence. To simply allow rate increase after rate increase, through pre-packaged settlement agreements, is not in the public interest. ED8 and McMullen therefore maintain that the settlement agreement should be rejected and this matter be opened for a full evidentiary proceeding on the merits.

///

///

///

///

///

DATED this 17th day of May, 2017.

MOYES SELLERS & HENDRICKS

Jason Y. Moyes
Jay I. Moyes

Attorneys for Electrical District Number Eight and McMullen Valley Water Conservation & Drainage District
E-mail: jimoyes@law-msh.com
jasonmoyes@law-msh.com
jim@harcuvar.com